

HOUSE BILL No. 1205

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-47-3.

Synopsis: Destruction of confiscated firearms. Requires the destruction of firearms confiscated by law enforcement agencies.

Effective: July 1, 2005.

Smith V

January 6, 2005, read first time and referred to Committee on Public Safety and Homeland Security.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1205

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-47-3-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This section
3 applies only to firearms which are not required to be registered in the
4 National Firearms Registration and Transfer Record.

5 (b) Firearms shall be returned to the rightful owner at once
6 following final disposition of the cause if a return has not already
7 occurred under the terms of IC 35-33-5. If the rightful ownership is not
8 known, the law enforcement agency holding the firearm shall make a
9 reasonable attempt to ascertain the rightful ownership and cause the
10 return of the firearm. However, nothing in this chapter shall be
11 construed as requiring the return of firearms to rightful owners who
12 have been convicted for the misuse of firearms. In such cases, the court
13 may provide for the return of the firearm in question or order that the
14 firearm be at once delivered:

15 (1) except as provided in subdivision (2), to the sheriff's
16 department of the county in which the offense occurred; or
17 (2) to the city or town police force that confiscated the firearm, if:

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(A) a member of the city or town police force confiscated the firearm; and

(B) the city or town has a population of more than two thousand five hundred (2,500) and less than two hundred fifty thousand (250,000).

(c) The receiving law enforcement agency shall ~~dispose of~~ **destroy** the firearms under subsection (b) ~~at the discretion of the law enforcement agency~~; not more than one hundred twenty (120) days following ~~receipt after the date the law enforcement agency receives the firearms~~. by use of any of the following procedures:

(1) Public sale of the firearms to the general public as follows:

(A) Notice of the sale shall be:

(i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and

(ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days prior to the sale:

(B) Disposition of the firearm shall be by public auction in a place convenient to the general public; with disposition going to the highest bidder. However, no firearm shall be transferred to any bidder if that bidder is not lawfully eligible to receive and possess firearms according to the laws of the United States and Indiana.

(C) All handguns transferred under this subdivision shall also be transferred according to the transfer procedures set forth in this article:

(D) Money collected pursuant to the sales shall first be used to defray the necessary costs of administering this subdivision with any surplus to be:

(i) deposited into the receiving law enforcement agency's firearms training fund; if the law enforcement agency is a county law enforcement agency, or into a continuing education fund established under IC 5-2-8-2; if the law enforcement agency is a city or town law enforcement agency; and

(ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties; if the law enforcement agency is a county law enforcement agency; or for law enforcement purposes; if the law enforcement agency is a city or town law enforcement agency.

(2) Sale of the firearms to a licensed firearms dealer as follows:

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(A) Notice of the sale must be:

- (i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and
- (ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days before the sale.

(B) Disposition of the firearm shall be by auction with disposition going to the highest bidder who is a licensed firearms dealer.

(C) Money collected from the sales shall first be used to defray the necessary costs of administering this subdivision and any surplus shall be:

- (i) deposited into the receiving law enforcement agency's firearms training fund or other appropriate training activities fund; and
- (ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties.

(3) Sale or transfer of the firearms to another law enforcement agency.

~~(4)~~ **However, a law enforcement agency may release a firearm** to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes of research, training, and comparison in conjunction with the forensic examination of firearms evidence.

~~(5) Destruction of the firearms:~~

(d) Notwithstanding the requirement of this section mandating ~~disposal~~ **destruction** of firearms not more than one hundred twenty (120) days ~~following~~ **after** receipt, the receiving law enforcement agency may at its discretion hold firearms it may receive until a sufficient number has accumulated to defray the costs of administering this section if a delay does not exceed one hundred eighty (180) days ~~from~~ **after** the date of receipt of the first firearm ~~in the sale lot~~ **by the law enforcement agency**. In any event, all confiscated firearms shall be ~~disposed of~~ **destroyed** as promptly as possible.

(e) When a firearm is delivered to the state police department laboratory or other forensic laboratory under subsection ~~(c)(4)~~ **(c)** and the state police department laboratory or other forensic laboratory determines the laboratory has no further need for the firearm in question, the laboratory shall return the firearm to the law enforcement agency for ~~disposal~~ **destruction** under subsection (c).

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SECTION 2. IC 35-47-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section applies to firearms that are required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause, if such return has not already occurred under the terms of IC 35-33-5, and if such owner remains lawfully entitled to possess such firearms according to applicable United States and Indiana statutes. If rightful ownership is not known, the law enforcement agency holding the firearm shall make a reasonable and diligent effort to ascertain the rightful ownership and cause the return of the firearm being held, providing the owner remains lawfully entitled to possess such firearms.

(c) Firearms that are not returnable under this section shall be at once delivered to:

(1) the sheriff's department of the county in which the offense occurred, unless subdivision (2) applies; or

(2) the city or town police force that confiscated the firearm if:

(A) a member of the city or town police force confiscated the firearm; and

(B) the city or town has a population of more than two thousand five hundred (2,500) and less than two hundred fifty thousand (250,000);

following final disposition of the cause.

(d) When firearms are sent to a law enforcement agency under subsection (c), the law enforcement agency may upon request release the firearms to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes of research, training, and comparison in conjunction with the forensic examination of firearms evidence.

(e) The receiving law enforcement agency or laboratory shall cause the registry of such firearms in the United States National Firearms Registration and Transfer Record within thirty (30) days ~~following~~ **after** receipt from the court.

(f) The court may order such firearms as are not returnable destroyed, specifying the exact manner of destruction and requiring the receiving law enforcement agency or laboratory to make due return to the ordering court the time, date, method of destruction, and disposition of the remains of the destroyed firearm.

(g) No portion of this section shall be construed as requiring the receiving law enforcement agency or laboratory to retain firearms

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1 which are inoperable or unserviceable. or which the receiving law
2 enforcement agency or laboratory may choose to transfer as public
3 property in the ordinary course of lawful commerce and exchange.

4 (h) Except as otherwise provided in a court order under
5 subsection (f), if firearms delivered to a law enforcement agency
6 under subsection (c) are not released under subsection (d), the law
7 enforcement agency shall destroy the firearms not later than one
8 hundred twenty (120) days after the firearms are delivered to the
9 law enforcement agency. A law enforcement agency shall notify the
10 United States Department of the Treasury of the destruction of a
11 firearm registered in the United States National Firearms
12 Registration and Transfer Record. The law enforcement agency
13 must provide the notice not more than thirty (30) days after the
14 firearm is destroyed.

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